DOYLE

# ABUSES IN RAILROAD TRANSPORTATION

8

Doyle, John Thomas

# Abuses in Railroad Transportation.

San Francisco, March 25, 1881.

Hon. Abram S. Hewitt, Washington, D. C.

*Dear Sir:*

The abuses in the system of overland transportation between the Eastern and the Pacific States have all sprung from a disregard of the principle of impartiality which should govern the administration of all public trusts. The companies operating the overland railroads have arbitrarily discriminated between individuals and between places, as their own interests or those of their managers dictate. By this method they have succeeded in monopolizing the business of transportation. and levying an unjust and, doubtless, unlawful tax on all commerce between the communities concerned; they have almost destroyed the lines of clipper ships which formerly did so large a share of the carrying; and thus, besides contributing materially to the destruction of our mercantile marine, have greatly enhanced the cost of the exportation of the surplus wheat crop of this coast. This last season it has cost our farmers as high as £4. 5s per ton for the carriage of their wheat to England. Two, three, and four years ago £2. 10s and £3. were current rates. Though partly due to increased production, this killing enhancement of freights is directly connected with the system of railroad management, which deprives ships coming here of all west-bound cargo, and throws the cost of the whole voyage on the freight hence to Europe. They have imposed on our exports, and on those of the Atlantic States which have commerce with us, an arbitrary *ad valorem* tariff, adjusted at all points to the *maximum*. They now threaten to divide our community into two hostile parties, intercourse between

which is prohibited. That these abuses are in violation of law, cannot, I think, be doubted; but from our peculiar dual form of government and the imperfection of our statutes, no adequate remedy for them exists. They have grown up under imperfect congressional legislation, and Congress alone can provide a remedy. Before proceeding to discuss the remedial legislation needed, we must examine the evil itself more in detail and trace its origin.

It is common knowledge that in every business certain goods require the speediest transportation obtainable, and in the carriage of others time is of little importance compared to rate of freight. In the commerce between the Eastern and the Pacific States, the former class of merchandise naturally sought transportation by rail, the latter by sea, or by the isthmus. As every dealer must keep up his assortment or lose his trade, all the importers naturally had dealings with the railroad companies, as well as with the ocean and isthmus lines, each in its appropriate sphere. In the summer of 1878, however, the Union Pacific Railroad Co. (having first secured the control of the Panama road) announced a change in its overland classification, and an advance in freight charges, ranging from fifty to one hundred per cent. over those previously in force, thus effectually forbidding all importations under its published tariff. At the same time our merchants were waited on by its freight agent, and informed that by contracting to give all their freight of every kind to the railroad company, they would not only escape the excessive charges of the new tariff, but even secure a slight reduction from the old rates. Had the mercantile community been united, the exaction of these contracts for exclusive dealing might have been resisted; but the company had rightly calculated on their want of union and preparation and the influence of business rivalry among them. Possibly those who first accepted the new contracts secured, or were promised, some special favors or advantages. However this may be, some were

found to lead in the movement and accept them. Each one who did so rendered it more difficult for the others to hold out; for the man who refused foresaw that he would not only have to pay on his fine goods double or treble the rates paid by his more compliant rivals in business, but also be exposed to invidious personal discrimination in rapidity of transport and usual accommodations in the way of shipment, forwarding and delivery—discriminations destructive to his business, easily practiced, difficult of proof, and, if proved, without adequate remedy. One by one at first, then in larger numbers, and finally almost in a body, the importers gave way and signed the contracts. The companies were very civil; the contracts were open to all alike, and were not at first very rigidly interpreted or strictly enforced. They were explained and rather accepted as a legitimate effort to compete with the ocean and isthmus lines, and their ultimate operation, perhaps, was not clearly foreseen. The following year renewals of them were proffered, with clauses a little more stringent as to rival modes of transportation; and in each succeeding year since, the screw has been turned a little tighter. The penal clauses of two former years are set forth in the *Nation* of December 8th, 1881, which I enclose. Those in the contracts for 1882 are as follows:

"In consideration of the guaranty of the foregoing special "rates of freight, the second party has covenanted and agreed, "and does hereby covenant and agree to ship or caused to be "shipped by way of the railroads owned or operated by the first "parties, and such other connecting railroads as may be desig- "nated from time to time by the said first parties, all the goods, "wares and merchandise handled by said second party, "which may or shall be purchased in or obtained from any "point in the United States or Canadas, east of the meridian of "Omaha during the term of this contract, for sale or use on the "Pacific Coast, whether such goods are shipped in the name or "for account of said second party or otherwise.

"It is mutually understood and declared that the object of "this agreement is to secure for and give to the first parties the "transportation of all goods handled by said second party, "which may be shipped from the Eastern States and Canadas to "San Francisco, or other port or point of distrubution on the

" Pacific Coast during the term of this contract. Also, that said " second party is able to control the matter and direct the manner " of shipping said goods, and that in the event of any portion of " said goods, being diverted from the routes, by which it is herein " agreed they shall be shipped, such diversion shall be construed " as, and held to be, *prima facie* evidence of default in the per- " formance of this agreement by said second party; and it shall " then be optional with said first parties to annul the agreement, " or to collect as liquidated damages a sum equivalent to the " charges said goods would have been subject to if shipped by " rail in accordance with the terms of this agreement.

" It is also mutually understood and particularly agreed that " the special rates of freight herein provided are for the sole " use and benefit of the second party, and that said second " party shall not allow the use of its name or shipping marks, in " any way or by any other party or parties, which shall procure " for said other party or parties the benefit of said special rates " of freight; and it is expressly stipulated that in case said " second party shall supply, by sale or otherwise, any party or " parties who are known to handle goods which may have been " shipped *via* any route not herein designated, from the terri- " tory east of the meridian of Omaha to any point or points on " the Pacific Coast of the United States, or to British Columbia, " during the term of this agreement, said second party shall " pay or cause to be paid to said first parties freight at the " regular tariff rates on the goods so supplied, in default of " which the first parties shall have the right, at their option, to " cancel and annul this agreement.

* * * * * * *

" It is further mutually understood and agreed, that in case " the first parties shall at any time have reason to believe that " the second party has violated or disregarded the terms of this " agreement, said first parties shall have the right to examine " the books and papers of the second party, in so far as may be " necessary to determine the truth of the matter in question.

" It is further mutually understood and agreed that all freight " shipped under or covered by this agreement shall be truly and " accurately described by the use of definite, not general, terms, " and, as far as true and practicable, by terms used in the tariff " of the first parties hereto, so that the proper rate to be applied " may be determined without inspection of the contents of the " packages by the carrier; and that in cases of doubt as to the " exact nature of the contents of any package of freight con- " signed to said second party, the carriers shall have, and are " hereby accorded, the right either to open said packages or to " inspect the original invoices of purchase for the contents of " said packages, in order to determine the proper rate to be " charged thereon; and that in case it shall be found that any " such package or packages contain freight of a higher class than

"that specified by shippers of same, the nature of the goods "having been wilfully misrepresented for the purpose of obtain- "ing a lower rate upon the same than that which would have "been obtained under this agreement, had the goods been truly "described, the carriers shall have, and are hereby accorded, the "right to charge upon such package or packages so mis- "described, double the regular tariff rate upon same."

* * * * * * *

I beg you to read these clauses thoughtfully and realize their full meaning and inevitable effect. They divide this community sharply into two classes, viz: those who "handle," *i. e.* buy, sell, forward or consume goods which have come here from the East otherwise than by rail, and those who do not. If one of the former class applies to purchase goods from one of the latter, he may perhaps, in an isolated case, obtain them, but he must pay a price much above the market value, because the seller has contracted and will be called on to pay the open tariff freight on them, *as a penalty for selling to a customer of an obnoxious class;* but if the request be repeated, he is sure in the end, and quite likely at the outset, to be told "we dare not sell to you lest our railroad contract be revoked, or a renewal of it be refused us." That is the precise meaning and intention! Absolute non-intercourse in business with any who, directly or indirectly, use other means of transportation, is the price exacted from the merchants of this coast for liberty to have their merchandise carried over a national highway, built and equipped wholly with means furnished by the public! How long social relations can survive an enforced cessation of business intercourse, accompanied, as this must be, by a sense of humiliation on the one side and wrong on the other, may be conjectured; but what jealousies, social enmities or other evil consequences may ensue is of no consequence. The man whose freight is transported by the overland railroad companies must neither buy nor sell with one who, directly or indirectly, countenances any other mode of transportation. He has become a slave of the rail.

Possibly these suggestions may appear exaggerated; it may be thought that such shocking conditions are not intended to be and will not be enforced, or that it will be impossible to discover violations. Even if this were true, it is no answer, for the contracts are equally objectionable in any event. But it is not true; they are intended to be enforced. The intention is distinctly announced. Nay, because they are henceforth to be strictly enforced, contracts are no longer open to all dealers alike; only the large houses are now allowed the privilege of taking them, the reason assigned being that *otherwise the company would have to maintain too large a corps of spies.*

Besides, if not to be enforced, why insert them? What object to be gained by a gratuitous and offensive imputation of habitual bad faith on the part of their customers, only to be guarded against by stringent conventional rules of evidence, discovery of books and papers, based on suspicion, and penalties inflicted at discretion of the complaining party? They are to be enforced, and indeed must be, or the whole contract system must break down. Every contract of the kind, like every penal enactment, must provide against evasion or become wholly inefficient. If buying and selling between the two classes spoken of were permitted, evasion of the contracts would be easy and would soon become general, because tolerated.

With all of these humiliating conditions, however, the contracts have been generally accepted by the mercantile community. Not that they are willing to be so oppressed or unconscious of the wrong inflicted on them, but having once given entrance to the nefarious system, they find themselves powerless to resist further encroachment, and must accede to whatever the railroad companies see fit to demand. So true it is:

"Things bad begun make strong themselves by ill."

Conversing with two gentlemen the other day, I said to one of them, an extensive merchant: "I suppose

you have taken one of these new railroad contracts?" "Oh yes," said he, "*it is either that or go out of business;* "we have no choice; that is the way I look at it." This but expresses the universal sentiment. And not only have they no choice as to accepting these contracts, but they must not even murmur or express dissatisfaction at them. No man in business dares speak out what he silently thinks on the subject; he knows too well the extent to which he is in the power of the companies. Even if he should escape the arbitrary revocation of his present contract, he feels certain that he will be refused a renewal next January, and must then affront the alternative of "going out of business." He cannot even fall back on ocean and isthmus transportation. The clipper lines round the Horn have been one by one rooted out, by the contract system, and the isthmus rates are controlled by the overland companies, as their contracts expressly declare. If a petition to Congress for relief from this oppression were circulated here to-morrow, it is safe to say that not ten, and probably not even one of those who most acutely feel it, and most denounce it in private to each other—certainly none who hold railroad contracts and expect to remain in business—would be willing to set their signatures to the paper. Nor are they to be blamed. They have families, property, creditors, and find themselves, without conscious fault on their own part, under the absolute government of a combination of large corporations unrestrained by any law but the interest and passions of their managers. The penalty for revolt would be destruction.

The evil is patent and monstrous, and, considering that the roads were wholly built and equipped with means provided by Congress, and their methods of business are exclusively under its control, the duty of providing a remedy by that body is urgent.

### THE REMEDY.

A congressional schedule of rates is open to grave objections, and, from its inevitable complexity, is

probably impracticable. Congress does not possess the necessary information to enact a rate of charges just to the railroads and the public. To confer the power of fixing charges on a Board of commissioners is objectionable on other grounds, and, if we may judge by our local experience, would afford no actual relief. General legislation, if practicable, is much to be preferred. Its justice or injustice can be determined on principle, without reference to confusing details of business and conflicting interests of particular parties. Hence, too, it is more likely to unite the friends of reform; and as its merits are capable of popular appreciation and discussion, a recognition of its justice is more likely to lead to its adoption. I know no good reason why the principles which should govern overland rates are not equally applicable to all inter-state railroad transportation; but my studies having been confined to the former, I address myself here to them alone. That general rules can be devised for them, just in themselves, simple and easily enforced, and which will remedy the abuses complained of, I have no doubt; and as the overland roads were wholly built and equipped with means furnished by the public, and are creatures of an act of congress, there can be no constitutional objection to congressional regulation of their methods. In fact, no authority but Congress can regulate them.

I admit, *in limine*, the private ownership of the roads, and that corporate property is as much under the protection of the Constitution as that of individuals. But the roads through private property are not the less public highways, and, as such, open by law to the use of all citizens on equal terms. Congress, in furnishing means for their construction, never designed that their use should be limited to any particular set of men, or that any preferences or partialities should be shown to one over another. There is no word in the Pacific Railroad Acts to sanction such a claim, and it is plain nothing of the sort was designed. The abuses in the system have all sprung from a disregard of this

principle; and in demanding conformity to it, we are strictly within the lines of simple justice.

The basis whereon the whole of this system has been built up is the artificial classification of merchandise adopted by the railroad companies, and the abuse of the liberty, incident to corporate existence, to make private contracts. Abolish the present absurd classification and substitute one founded on justice and good sense; require the companies to make public their rates of charge, and forbid all deviation under any pretext, and you will have enacted regulations which, if enforced, will tear up the whole wicked system by the roots.

There is another abuse, formerly very rife here, though to what extent now practiced I am unable to say. It is liable at any time to recur, and should be dealt with in any reformatory legislation. I mean discrimination between places. This is, in some aspects, "a more serious evil than discrimination between "persons, for it affects whole communities, and may "involve in its consequences the ruin of individuals "and families, and inflict injury on thousands who "have no direct relations with railroads, but whose "property is rendered valueless, and the fruits of "whose industry is destroyed by the decay of their "place of residence, caused by adverse railroad dis-"crimination."

Want of space forbids me to enlarge on this or refer to instances. There are, unfortunately, plenty of them that are notorious, and your business experience must have drawn your attention to such. So far as the overland roads are concerned, they are easily dealt with by legislation which will require transportation charges to be based on the cost of the service. That is the common law rule, and is the only rational or philosophical basis either of the classification of goods or the rate of charges. Let us take these separately.

I.—AS TO CLASSIFICATION.

Two persons present themselves simultaneously at the same railroad station, offering goods to be transported. The weight of each lot is the same, the space occupied just equal, and the places of shipment and destination are also identical. What just reason can be rendered why the freight of one lot should be double or treble that of the other? Does the mechanical engine which draws the train, the inanimate fuel which furnishes the power, the engineer, fireman, conductor or brakeman, who do the work, or the clerk or bookkeeper who enters or way-bills the goods, know of any distinction between the one and the other? Are any of these employees paid higher wages for attending to the one package or the other? Is there any—even the slightest—difference in the cost of performing the service? None of these! Why, then, this minute and vexatious classification of goods, and the searching demand of the carriers for a precise specification of the contents of the package before declaring the rate of freight? Why, for instance, is one rate demanded on printing paper and another on books in sheets? Why is the freight on ores of equal weight and identical appearance from the same mine put at a certain percentage of their assay value? The companies' reason is of course obvious enough. Their charges are adjusted on the basis of a percentage of their customers' profits, and this, the largest that the trade will bear. They speak in their contracts of their *tariff*, and very rightly, for it is as much a tariff as any ever enacted by Congress. It is a tariff on imports from one State to another. A tariff for revenue, but which (as recently shown in the case of sugar) is occasionally, and for a consideration, made protective. Such a tariff Congress itself has no power to enact, and if it had, it would never seriously entertain the suggestion. Yet these companies have enacted it, and by its means have been enabled to constitute themselves intrusive partners in every man's

business, and, without sharing risk or contributing capital. to appropriate the largest share of the profits, as a tax in advance of sale or consumption!

The system is defended at times on the plea of encouragement to feeble or languishing industries. We are told, *ex. gr.*, that ore of a high grade must pay a high freight, else the owners of poor mines would not be able to get their ores to market. Peter, in other words, must be robbed to pay Paul. The pretext is as destitute of truth as it is flimsy—a mere excuse for high charges, when it is thought the trade can bear them. When a railroad company carries ores worth twenty-five dollars per ton for five dollars, they do so because that sum remunerates them for the service, their charge of fifty dollars for carrying a ton of like ore worth ten times as much, is to the extent of the excess a mere extortion. So, when a higher or even as high a charge is made, for carrying goods a portion of the way, as for the whole way, the injustice is so patent that no amount of argument can obscure it. Outside of the cupidity of the companies, and their power to exact, I have never heard any plausible reason assigned for these discriminative rates of charge, except the carrier's common law liability as an insurer. But every one knows that this liability is a myth. It has no practical value, is released in advance ninety-nine times in a hundred, and had better be abolished by law as a mere excuse for unjust exactions. It arose in a condition of society wholly different from ours; the reasons on which it was founded have long since ceased to exist, and there is no reason why it should longer continue. Remove it, and no shadow of excuse is left for artificial classification.

There is a natural and philosophical basis for classification. It was in universal use before railroads monopolized transportation, and still prevails on water routes, and others open to competition, and it is simplicity itself; namely, weight and measurement.

These two classes, namely, weight goods and measurement goods, comprise the great mass of merchan-

dise which is the subject of transportation. The few articles which do not come properly within either,* may constitute a separate and third class. Let us get back, then, to the old classification, adopt a unit of weight and a unit of measurement, to be applied at the option of the carrier to all goods, save those included in the limited and exceptional category referred to. Require the companies to adopt and publish their rates on these units or their multiples, open to all shippers on equal terms, and forbid all special contracts, special rates, rebates or peculiar favors, and you will at once get clear of all discrimination between individuals. Nor will this change materially enhance the cost of transportation. It is demonstrable, though space does not permit its present discussion, that their own interest will compel the companies to carry for the lowest rates at which the business can profitably be done.

### II.—AS TO DISCRIMINATION BETWEEN PLACES.

The cost of transportation by rail is evidently made up of three items, viz:

1. The fixed expenses of the company, as salaries of officers and employees, interest on capital, rents, taxes, insurance and similar outgo.
2. The cost of receiving, loading, way-billing, reporting, unloading, delivery and the like.
3. The cost of movement.

The first of these is practically a constant quantity; the second depends on the volume of goods handled, but is unaffected by the distance they are moved; the third varies in direct proportion to distance traversed. Of each of these three items of cost each package should bear its just proportion, and each should pay the carrier a reasonable percentage of profit. The charge for transporting a given lot of merchandise should therefore be made up of two sums; the one an

* *Ex. gr.* Living animals, explosives and inflamables, machinery or its parts of extraordinary size, form or weight, as the shaft of a steamer, mast of a ship, or the like.

amount fixed without regard to the distance to be traversed, but varying with the quantity of the goods, the other variable and proportioned to quantity and distance. In other words, a terminal and a movement charge.

The variation in cost attending the handling of small and large lots of merchandise may be compensated by allowing the terminal charge to vary according both to the quantity of goods and the number of packages. There should also be a wholesale as well as a retail unit, viz, the carload lot and the ton. Whatever these rates may be for either, they should be made public and be the same to all comers.

There are numerous other considerations which might be adduced bearing on the questions I have here endeavored to discuss, but the necessity of keeping this communication within reasonable bounds forbids adverting to them. They all lead up to these cardinal principles, a unit of weight, a unit of measurement, a terminal charge and a rate per mile, published rates and no deviation. These apply to and cover all ordinary merchandise. Where articles transported, from their peculiar form or character, excessive size or weight or inherent qualities, do not fairly come within the reason of the rule, they should be excepted; such cases are of rare occurrence and do not affect the general commerce of the country; they may for the present, at least, be safely left to private contract.

### III.—ENFORCEMENT OF THESE PROVISIONS.

It will not do to leave the enforcement of these provisions to the action of individuals. Every dealer with these large companies is compelled by circumstances to put himself so much in their power in his every day transactions with them, that, to use an ordinary phrase, he cannot afford to quarrel with them.

This fact experience has abundantly proved, and the enforcement of the law must therefore be entrusted to

agents of the public. A board of commissioners should be appointed to whom all transactions and dealings of the companies should be constantly and systematically reported. They should have, for the purpose of investigation, all the powers of a court or congressional committee and should be charged with the duty of prosecuting for all violations of the law; penalties should be denounced for its infraction sufficiently severe to ensure obedience. The Board should report annually or oftener to Congress or to the President.

I have drawn portions of a bill embodying these ideas and submit the same to your consideration.

Yours respectfully

JOHN T. DOYLE.